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<b>S.H., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 07-625</b>
	)	<b>Issued: May 31, 2007</b>
<b>DEPARTMENT OF STATE, CONSULAR</b>	)	
<b>AFFAIRS, U.S. EMBASSY, London, United</b>	)	
<b>Kingdom, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

On January 3, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 20, 2006 merit decision concerning her claim for periods of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant met her burden of proof to establish that she sustained employment-related disability for intermittent periods of lost work between April 30 and November 29, 2001.

On July 4, 2001 appellant, then a 38-year-old visa processing administrator, filed an occupational disease claim alleging that she sustained an injury to her left wrist on April 30,

2001 when she struck it on a desk while she attempted to position herself in a tall stool.<sup>1</sup> She first stopped work on April 30, 2001. The Office accepted that appellant sustained a contusion and tenosynovitis of her left wrist. Appellant periodically stopped work and claimed disability compensation between April 30 and November 29, 2001.<sup>2</sup>

Appellant submitted a September 5, 2002 report in which Dr. David Tovey, an attending orthopedic surgeon, stated that she presented on May 18, 2001 complaining of a left-sided injury and exhibited swelling around the distal end of the left radius with some local tenderness. Dr. Tovey stated:

“[Appellant] was seen again on May 21 and June 1, 2001, when some improvement was noted, and further consultations took place on June 18 and July 12, [2001] when wrist pain continued to be a significant problem, and hence a referral for physiotherapy was initiated. She was seen subsequently twice by a physiotherapist and discharged on August 6, [2001]. [Appellant] was seen again in the surgery on September 7[, 2001] and the situation seemed to be static, with minimal improvement.”

The record contains clinical notes from Dr. Tovey, dated May 18 and 21, June 1 and 18, and July 12, 2001, which show that appellant continued to have problems with tenosynovitis of the left wrist. In a May 21, 2001 note, Dr. Tovey diagnosed a “wrist injury” and indicated that appellant should be off work for two weeks.<sup>3</sup> In a November 7, 2001 note, he diagnosed left wrist tenosynovitis and indicated that appellant should be off work for one month.<sup>4</sup> In a December 2, 2002 form report, Dr. Tovey listed the date of injury as May 21, 2001, diagnosed left wrist tenosynovitis, and indicated that appellant was totally disabled from May 21, 2001 to “ongoing.”<sup>5</sup>

In letters dated March 31 and May 19, 2006, the Office advised appellant that additional medical evidence was necessary to document her claims of disability. Appellant resubmitted copies of previously submitted reports.

By decision dated October 20, 2006, the Office found that appellant did not establish that she sustained employment-related disability for periods of lost work between April and November 2001, including lost work on April 30, May 1 and 17, June 2 to 17, June 19 to

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<sup>1</sup> Appellant initially indicated that the injury occurred at some point between April 30 and May 4, 2001, but later specified that it occurred on April 30, 2001.

<sup>2</sup> Appellant was not employed by the employing establishment after November 29, 2001.

<sup>3</sup> The record also contains a note of Dr. Tovey which appears to have been dated in June 2001 but does not identify a legible date in June 2001. Dr. Tovey diagnosed tenosynovitis and indicated that appellant should be off work for two weeks.

<sup>4</sup> The record also contains notes from Dr. Tovey indicating that appellant should take off work for various periods due to depression and stress.

<sup>5</sup> The form listed July 26, 2001 as a date of treatment but does not provide any further detail about what treatment was received on that date.

July 11, July 13 to August 31, September 2 to 6 and September 8 to November 6, 2001. The Office noted that April 30, 2001 was an “administrative day” which was not compensable by the Office and that appellant did not submit sufficient medical evidence to establish disability for this date or the other periods of lost work. The Office found that appellant submitted medical evidence establishing that she sustained employment-related disability for periods of lost work on May 18, May 21 to June 1, June 18, July 12, September 1 and 7 and November 7 to 29, 2001.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>6</sup> has the burden of establishing the essential elements of her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>7</sup> The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup>

### **ANALYSIS**

The Office accepted that appellant sustained a contusion and tenosynovitis of her left wrist and claimed compensation for disability between April 30 and November 29, 2001. In its October 20, 2006 decision, the Office found that appellant submitted medical evidence establishing that she sustained employment-related disability for periods of lost work on May 18, May 21 to June 1, June 18, July 12, September 1 and 7 and November 7 to 29, 2001. The Office determined that appellant did not establish entitlement to compensation for lost work on April 30, May 1 and 17, June 2 to 17, June 19 to July 11, July 13 to August 31, September 2 to 6 and September 8 to November 6, 2001.

In accepting appellant’s claim for the above-noted periods, the Office relied on the May 18 and 21, June 1 and 18, July 12, November 11, 2001 and September 5, 2002 notes and reports of Dr. Tovey, an attending orthopedic surgeon. The record contains other reports of Dr. Tovey but these reports do not support a finding that appellant sustained periods of employment-related disability other than those already accepted. In a December 2, 2002 form report, Dr. Tovey listed the date of injury as May 21, 2001, diagnosed left wrist tenosynovitis,

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<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>8</sup> *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

and indicated that appellant was totally disabled from May 21, 2001 to “ongoing.” This report, however, is not sufficiently well rationalized to support additional periods of employment-related disability.<sup>9</sup> Dr. Tovey did not provide any explanation of why he apparently indicated that appellant was totally disabled for the period May 21, 2001 to December 2, 2002. For example, he did not provide a description of his treatment of appellant over such an extensive period or list clinical findings for specific periods which would support a finding of employment-related disability.<sup>10</sup> Appellant did not submit any other medical evidence which identified periods of employment-related disability during the claimed period and the Office properly denied her claim for additional periods of disability compensation.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained employment-related disability for periods of lost work between April 30 and November 29, 2001, other than those periods for which employment-related disability has already been accepted.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers’ Compensation Programs’ October 20, 2006 decision is affirmed.

Issued: May 31, 2007  
Washington, DC

David S. Gerson, Judge  
Employees’ Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees’ Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees’ Compensation Appeals Board

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<sup>9</sup> See *supra* note 9 and accompanying text.

<sup>10</sup> The record also contains a note of Dr. Tovey which appears to have been dated in June 2001 but does not identify a legible date in June 2001. Dr. Tovey diagnosed tenosynovitis and indicated that appellant should be off work for two weeks, but the Board is unable to read the specific date of the note and therefore it cannot provide support for a finding of employment-related disability during any specific period.